IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 270 OF 2004
with
CIVIL APPLICATION NO. 2894 OF 2006

Chinubhai Kalidas Patel,)
through his legal representatives)
1) Smt. Sulochana Chinubhai Patel)
2) Sou. Linaben Bharatbhai Patel)
both adult, residing at 20, Patel Society,)
C.G. Road, Ellisbridge,)
Ahmedabad-380 006.)..Appellant
(Orig. Claimant)

Versus

The State of Maharashtrra, through the)
Special Land Acquisition Officer, Thane.)..
Respondent

Ms. Gauri Godse for the appellant.
Mr. A.R. Patil, Assistant Government Pleader, for the respondent.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

Judgment reserved on : June 05, 2007
Judgment delivered on: June 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Vide judgment and order dated 20th July, 2002, the learned Joint District Judge, Thane, partly allowed Land Acquisition Reference No. 119 of 1987, enhanced the compensation and directed the

authorities to pay compensation at the rate of Rs. 30,000/- per hectare with other statutory benefits including solatium. The claimant felt aggrieved from the said judgment has filed the present First Appeal before this Court praying for further enhancement. According to the claimant, the fair market value of the land in question is Rs. 25,000/- per sq.mtr. and the compensation awarded to him at the rate of Rs. 3/- per sq.mtr. was entirely inadequate, unfair and unjust.

2. Notification under Section 4 of the Land Acquisition Act, 1894, hereinafter referred to as “the Act”, was issued by the Commissioner, Konkan Division, on 11th June, 1984, intending to acquire the land in the revenue estate of village Yeoor, Dist. Thane, admeasuring about 10 hectares 39.9 ares in Survey No. 42/1, out of which 39.9 ares was situated in that village. The claimant claimed to be owner of the land falling in the said survey number admeasuring about 10 hectares. Notification under Section 6 of the Act, in furtherance to the earlier notification, was issued on 11th June, 1985, and whereafter the Collector determined the compensation and passed an Award. The claimant received notice under Section 12 (1) of the Act on 21st January, 1987, that the land was taken over by the Special Land Acquisition Officer on 4th November, 1985. Against the award, as

already noticed, the claimant preferred a reference under Section 18 of the Act wherein the compensation was enhanced to Rs. 3/- per sq.meter vide order dated 20th July, 2002, resulting in filing of the present appeal for further enhancement.

3. This appeal, along with the appeal filed by the State being First Appeal (Stamp) No. 23743 of 2003, was heard and the Court passed the following order on 5th June, 2007.

> "Arguments on this appeal have been heard. The State has also filed First Appeal against the Judgment being F.A. St. No. 23743 of 2003. However, the learned Counsel for appellant State in that appeal submits that he has instructions to withdraw hat appeal. The same is therefore dismissed as withdrawn. F.A. 270 of 2004 is closed for judgement."

4. As is clear from the above order, the appeal filed by the State already stood dismissed as withdrawn. In the present appeal, the claimant has primarily relied upon the sale transaction at Exhibit-54 in support of his contention. According to Exhibit-54, the land falling in Survey No. 47 was sold at the rate of Rs. 17/- per sq.yard which is equivalent to Rs. 20/- per sq.meter. The claimant has heavily relied upon a letter dated 20th December, 1983 (Exhibit-47) written by the Ministry of Defence to the Project Director, Radar and Communication

Project Office, wherein the sanction was conveyed for acquisition of 30 acres of land at Yeoor Village in Thane District at an estimated cost of Rs.17,59,500. According to this calculation, the market value of the land would have to be determined at a higher rate than the compensation awarded by the learned Reference Court. It is contended on behalf of the claimant that both these documents have a direct bearing on the matter in issue and there is no basis before the trial Court to grant compensation at the rate of Rs.3/- per sq.mter.

5. On behalf of the respondents, it is contended that there is no evidence produced by the claimant to show that the land is similar to the land contained in Exhibit-54 and also that the land was a forest land and thus had no potential. According to the respondents, in fact, there is no evidence to support this conclusion.

6. We are unable to find any merit in the submissions advanced on behalf of the respondents. It cannot be disputed that the entire land i.e. the subject matter of lands at Exhibits-47 and 54 and the land in question are situated in the revenue estate of village Yeoor. In fact, the acquired land has a better location and potential than the land reflected in Exhibit-54 as that land is situated at the back of the

acquired land. Thus, it cannot be concluded that the value of the land of the claimant should be computed at a rate lesser than the rates mentioned in the sale transaction at Exhibit-54. The decision of the Government of India in terms of Exhibit-47 also reflects that the acquired land had a reasonably good location and potential and was entitled to a higher compensation. Besides proving Exhibit-54, the claimant had also proved Exhibit-53, a special power of attorney, in relation to the same land. The witness Bharat had claimed compensation at the rate of Rs.60,000/- per acre and the Additional Collector had recommended compensation at the rate of Rs. 50,000/- per acre vide Exhibit-48, to which the Ministry of Defence had sent its reply vide Exhibit-47. This witness had clearly stated in his evidence that the land at Exhibit-54 was situated at the backside of the acquired land and, in fact, at the time of acquisition there was no approach road to Gat No. 47. The claimant had also examined an expert, Ramchandra Krishnaji Dowale, an approved valuer, who in his statement, besides other factors, clearly stated that the acquired land was situated in the western portion of Thane. Yeoor road is a developed road and it abuts the suit land. In 1985, there was facility of water and light on the acquired land. The above documentary and oral evidence produced by the claimant could not be demolished by the

cross-examination of these witnesses. The State led no evidence to support its claim. The claimant has discharged the onus placed upon him and produced documentary as well as oral evidence. The evidence on record clearly shows that the sale instance at Exhibit-54 is a comparable instance and the land was part of the same village and in fact the acquired land has better location. During the course of arguments, there was no dispute before us that the land belonging to the claimant was not a forest land but was a land which could be used for even non-agricultural purposes. It may be noticed that in the award the Collector himself has noticed that the sale of the land was effected in the year 1983-84 and had non-agricultural potential. Thus, it can safely be concluded that the compensation awarded by the Reference Court is inadequate and is not fully justified keeping in view the evidence produced by the claimant on record.

7. The claimant had also relied upon the judgment of the Court in respect of the lands situate at Kalwa and Shahabaz located on western side of Thane-Belapur Road, Turbhe, New Bombay, where compensation at the rate of Rs. 36/- per sq.mtr. was awarded in respect of the said land in LAR No. 149 of 1987. However, in LAR No. 159 of 1987, the compensation was awarded at the rate of Rs. 15/- per

sq.mtr. The learned Reference Court has not given any reason for not taking into account the reflected value of Exhibit-54 as well as the statement of other two witnesses. No doubt, the compensation stated in Exhibits-47 and 48 could not be made the basis for determining the fair market value of the land but certainly it was a relevant consideration for arriving at a fair conclusion. The Reference Court had noticed the judgment of the Delhi High Court in the case of *Pt. Jairam Singh* vs. *Union of India and others* (AIR 1989 Delhi 310) as well as the judgment of the Supreme Court in the case of *Administer General of West Bengal* vs. *Collector, Varanasi (*AIR 1988 SC 943) on the issue that transaction of adjoining villages can be taken into consideration and that the prices fetched for the land similar to the acquired land at or about the same time of acquisition can make a reasonable and justifiable basis for determining the compensation payable to the claimants. Having noticed these judgments, still the Court did not state any specific reasons for not following the reasonable deduction of valuation indicated in Exhibit-54. Once the document is proved in accordance with law, and the respondents failed to bring any evidence on record, there has to be some compelling circumstances to reject such an evidence which has a direct bearing on the matter in controversy before the Court.

8. In a recent judgment of this Court in the case of *The State of Maharashtra* vs. *Trimbak Joma Thakur (*First Appeal No. 646 of 1995), etc. etc. it has been stated that the Court has to apply certain guesswork within its reasonable limits to determine the fair market value of the acquired land. The Court in the said case held as under:

> "The court would have to apply the principle of guess work which is permissible in law, particularly keeping in mind the fact that there are no direct sale instances available on record of the acquired lands or adjacent villages. Thus, the Court would have to essentially apply some guess work to determine the fair market value of the lands. In the case of *Risal Singh and ors. (Sh) vs Union of India and anr*. reported in 2006(VII) AD(Delhi) 665, the Court has taken a view on the above principle and held as under:
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> > "In so far as the rejection of sale deeds Ex PW1/1 & Ex.PW2/1(Ex PW1/3) by the learned Reference Court is concerned, we can hardly find any fault in the impugned judgment. But there could be no reason before the reference court for not relying upon Ex. PW1/2 which related to a sale transaction of village Bamnoli and was sale of a reasonably large piece of land admeasuring about 3 bigas 15 biswas. The reasoning given by the learned reference court for rejecting this evidence is not sustainable in law. The best method of computing the compensation payable to the claimants is the sale instances relating to the land in question. A willing buyer and a willing seller would offer what

price of the land at the time of acquisition or immediately thereto would be a definite guide for determining the fair market value of the land on the date of the notification. Once such an evidence is available on record, there is hardly any need for the court to advert itself to any other method of computation. This principle was clearly stated by the Supreme court in case of *ONGC Ltd vs Sendhabhai Vastram Patel and others* 2005(VII)AD (SC) 126 = (2005) 6 SCC 454. The Supreme Court ... also clearly stated that the court has to apply some kind of guess work in computing the compensation payable to the claimants for acquisition of their respective lands. It may not be always possible to grant compensation arithmetically correct to the decimals. The counsel appearing for the claimants referred to various judgments of this court wherein for acquisition of land in village Bamnoli or other surrounding villages during the year 1982-86, compensation was awarded by the court for acquisition of the agricultural land @ Rs.21,000 per bigha to Rs.47,000 per bigha and even more and submitted that in the present case, they would be entitled to get compensation @ Rs 70,000 per bigha at least. They claim enhancement even on Ex.PW1/2 as it is stated to be a sale deed more than six months prior to the date of acquisition. We have already noticed that the reference court could not have outrightly rejected Ex PW1/2 as it was a sale instance of a reasonably large piece of land and the sale transaction had been executed more than six months prior to the date of notification. There was no reason for the court and in fact no evidence had been led that the transaction Ex PW1/2 was a sham transaction and its genuineness was doubted for any reason whatsoever. The judgments of this court in RFA 565/99 and 481/99 are a

> merely guiding factor and cannot be taken as a determinative basis in regard to fixation of compensation payable to the claimants. These awards and judgments relate to different villages which may be adjacent but once the sale deed of the same village is available, we find that it would be unnecessary to travel into this controversy".
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> (emphasis supplied)

Reference can also be made to the case in *Jas Rath vs Union of India,* 2006(VII) A.D. Delhi 284, in this regard.

22. Where the Court has to make an award, the Court has to examine the case to achieve ends of judicious fairness, and reliance upon certain guess work was equally settled principles of law. The law that deduction from the sale consideration / allotment price / premium / letter of allotment even in leasehold properties has to be made for developed areas. From the consideration deduction can vary keeping in view the facts and circumstances of the case right from 20% to even 70%. Firstly, it would be on account of comparative value of the developed area and undeveloped area. For development of that area deduction of rate for roads and other utility services have to be cumulatively applied before the Court can determine the market value of the acquired land. Further reference can be made to the decisions in *Union of India vs. Dr. Balbir Singh,* 1999(3) PLR 613, *Smt. Bindu Garg vs State of Haryana,* 1999(2) PIL 794, *Dhanpal Rai vs Grampanchayat Village Lakhno Tehsil Anandpur Saheb District Rupnagar and ors.,* 2000(1) PLR 830, and *Risal Singh and ors. vs Union of India and anr.,* 2006(VII) AD Delhi 665. In the case of *Dhanpal Rai* (supra), the Court held as under:

> "The only evidence which can help the court in computing fair market value of the land in question would be Exhibit P.38 and Exhibit P 39. The details of Exhibit P 38 and Exhibit P 39 which were sold in the year 1982 -1986, which shows the increase in the value of the land, certainly also

indicates an apparent fact that the land sold is quite small. The property of each claimant which has been acquired vide notification in question is also small pieces of land, though totaling an area of 4653 square yards, was acquired for the construction of two lane bridge. Average of P 38 and P 39 comes to Rs.3500 per square yard. Keeping in view the fact that the lands in small portions were acquired for a much beneficial public purpose, namely construction of over bridge crossing and the fact that the sale instances were again between the same parties, would normally indicate a higher value of the land than the market value. Further more, the land sold under these Exhibits is of very small pieces nearly 10 square yards or so. For the variety of reasons stated by the Hon'ble Supreme Court in the case of *K.S. Shivadevamma and ors. vs. Assistant Commissioner and Land Acquisition Officer and anr*., 1996(2) SCC 62, it is necessary for the court to apply the some reasonable element of deduction.

The above grounds in addition to the fact that the area for the acquired purposes is to be developed by heavy costs to be incurred by the State and the fact that the development itself would be ultimately beneficial to the public at large, detailed reasons have been given by this court in RFA No. 4294 of 1990 title *State of Haryana vs Meena Dua* (2000-1) 124 PLR 9, decided on 27.5.1999 for the necessity to apply the principle of deduction to such case. The consistent view taken by the Hon'ble Apex Court in its various judgments which have been relied upon in those cases is that deduction in such cases is an essential feature for determination of the amount payable to the claimants.

Therefore, I am of the considered view that the

> present case is a fit case where deduction of at least 53% should be applied. Such extent of deduction was applied by the Hon'ble Supreme Court in the case of *K.S. Shivadevamma* (supra). I fail to understand as to why the learned District Judge had not applied the principle of deduction to the facts of the present case. Computing on the aforesaid basis the compensation payable to the claimants would be at the rate of Rs.1045 per square yard (Rs 5500 x 53 = 1855) 3500 - 1855 = Rs.1645.00). Consequently the claimants would be entitled to compensation of Rs.1065 per square yard with all statutory benefits under sections 23(1A), 23(2) and 28 of the Act".

9. On the basis of the evidence on record, which is to be examined in the light of the above principles, we are of the considered view that the claimant would be entitled to seek higher compensation than the one awarded to him. The sale transaction at Exhibit-54 cannot be a guiding factor but some amount of deduction has to be made for the purpose of determining the fair market value of the land. The land was sold at the rate of Rs. 20/- per sq.mtr. in terms of Exhibit-54. The said land is located beyond the acquired land. As such and even after making certain deductions it will be just fair and proper that we would determine compensation at the rate of Rs.15/- per sq.mtr. The claimant would, obviously, be entitled to the statutory benefits as contemplated under Section 23 (1A) and (2) of the Act.

10. This appeal is thus partly allowed while leaving the parties to bear their own costs. Civil Application is also accordingly disposed of.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.